

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.W. et al., Persons Coming Under  
the Juvenile Court Law.

D065570

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

(Super. Ct. No. SJ12968A-B)

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Diego County,  
Cynthia Bashant, Judge. (Retired judge of the San Diego Sup. Ct.) Affirmed.

Marisa L. D. Conroy, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy  
County Counsel, and Caitlin E. Rae, Deputy Counsel, for Plaintiff and Respondent.

Dependency Legal Group of San Diego and Tilisha T. Martin for Minors.

J.S. (mother) appeals a judgment declaring her daughters, A.W. and R.W. (together, the children), dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b), providing a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child. (Undesignated statutory references are to the Welfare and Institutions Code.) The mother contends the juvenile court could not rely on allegations outside the San Diego County Health and Human Services Agency's (the Agency) petition as bases for jurisdiction, and the evidence was insufficient to support the court's jurisdictional findings. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

On a night in November 2013, the mother and the children's father, L.W., arrived home together around 10:15 p.m. A babysitter had been watching the children, who were approximately five years old at the time. When the parents arrived, A.W. was asleep in her mother's room. While the mother put R.W. into bed with A.W., the father left the house.

Approximately 10 to 15 minutes later, a law enforcement officer visited the mother's house to investigate a hit and run accident. The officer believed the father was involved in the accident and lived with the family. The mother smelled of alcohol and appeared intoxicated. According to the officer, the home had a strong marijuana odor. When the officer asked the mother if the father was home, the mother stated the father did not live there. After being granted permission, the

officer searched the house and found a "bong" on top of a dresser in the mother's room where the children were sleeping and a "baggie" of marijuana on the couch. The dresser was approximately five feet tall. The children were taken to the Polinsky Children's Center.

A social worker interviewed the mother and the father. The mother denied she was with the father on the night of the incident and that he lived with her. She reported an extensive history of domestic violence, stated she once had a restraining order against the father, and provided conflicting information about the father, their living situation and timelines. She also claimed she had no knowledge of the marijuana found in her home and denied the presence of a "bong" on her dresser.

The father told the social worker he had hit a parked car and went to his house to get documents to resolve the matter. He also stated the marijuana found at the mother's house was his and the "bong" belonged to the mother. The father denied living with the mother, but stated he helped out with the children.

The social worker also interviewed the children's babysitter. The babysitter stated the mother and father "'reeked of alcohol'" when they arrived home and both appeared to be under the influence. The babysitter had observed the water pipe on the mother's dresser and that it had marijuana residue on it.

The Agency filed petitions in the juvenile court under section 300, subdivision (b). The petitions alleged the children were at substantial risk of harm because "marijuana and drug paraphernalia were located in the home in areas accessible to the children and law enforcement noted the home had a strong odor of marijuana."

After the Agency filed the petitions, the social worker interviewed the mother again. She provided information that conflicted with her prior interview, including admitting there was a water pipe on the dresser. The mother was not honest about the father's living situation. When the social worker confronted the mother with her children's statements that their father lived with them, the mother stated the father stayed there "'sometimes'" and referred to the father's presence in the home as "'visits.'" This conflicted with her earlier report that the father lived with his mother in Chula Vista. At his second interview, the father reported that he lived at home with the mother and his daughters "continually but not permanently." He also conceded to incidents of domestic violence against the mother in the presence of the children.

The family had four prior referrals to the Agency for alleged sexual abuse of the children and domestic violence between 2010 and 2012. The father had an extensive criminal history, including arrests for domestic violence and drug possession. The mother had three charges for driving under the influence of alcohol between 2004 and 2011. There was a criminal protective order in place against the father. That protective order stemmed from a domestic violence case and does not expire until August 2015.

At the time of the contested jurisdiction and disposition hearings, the mother had entered drug treatment and had tested negative for drugs. The father was in a domestic violence program and there was no evidence that he had recently violated the criminal protective order against him.

The court found the section 300, subdivision (b), allegations true, stating the case was about more than mere marijuana use. The court noted a history of drug and alcohol abuse and domestic violence. The court also discussed the hit and run accident. The court found there was a serious risk to the children if the Agency did not intervene because "the parents have had wake-up calls in the past and it hasn't been enough." The court declared the children dependents of the court but ordered them placed with the mother.

## DISCUSSION

### I. *Challenge to Sufficiency of Petition*

The mother argues for the first time in her reply brief on appeal that the Agency could not rely on facts outside its petition to assert the children needed juvenile court protection. Specifically, she contends the Agency and juvenile court could not rely on facts concerning the hit and run accident, history of domestic violence, and violation of a criminal protective order as bases for jurisdiction under section 300, subdivision (b), because these facts were not alleged in the Agency's petition. We reject this argument.

Generally, "'points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before.'" (*In re Tiffany Y.* (1990) 223 Cal.App.3d 298, 302.) Moreover, if the jurisdictional findings are supported by substantial evidence, the adequacy of the petition is irrelevant. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 626-627; see also *In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1036-1038.) The only exception occurs when a parent

claims a petition fails to provide actual notice of the factual allegations. Unless the alleged factual deficiencies result in a miscarriage of justice, the reversal of a jurisdictional order supported by substantial evidence is unwarranted. (*In re Athena P.*, *supra*, at pp. 627-628; *In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397.)

The mother waived her argument by raising it for the first time in her reply brief. Additionally, she does not argue she received inadequate notice of the factual allegations. Therefore, we review the petition for substantial evidence and need not separately address the mother's claim regarding the sufficiency of the petition.

## II. *Jurisdiction*

The mother contends there is insufficient evidence to support the court's jurisdictional findings. Specifically, she argues the presence of marijuana in her home does not constitute neglectful conduct. We reject this argument.

In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. Evidence is "[s]ubstantial" if it is reasonable, credible and of solid value. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant has the burden of

showing there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

Juvenile dependency proceedings are intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm."

(§ 300.2.) "The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196.) The focus of section 300 is on averting harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

Although "the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm" (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135; *In re Troy D.* (1989) 215 Cal.App.3d 889, 899-900.) A parent's past conduct is a good predictor of future behavior. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169-1170.) "Facts supporting allegations that a child is one described by section 300 are cumulative." (*In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1050.) Thus, the court "must consider all the circumstances affecting the child, wherever they occur." (*Id.* at pp. 1048, 1049.)

Here, the mother relies on cases in which the court stated that the mere presence of marijuana in the home, *without more*, is not sufficient to bring a minor

within the court's jurisdiction. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) However, as the juvenile court noted, this case is not merely about marijuana use. Rather, the mother and the father had a significant history of alcohol and drug abuse. On the night of the hit and run accident, officers found marijuana and drug paraphernalia in the house, including on a couch and in the room where the children were sleeping. (See *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651 [leaving drug paraphernalia within minor's reach indicates gross lack of attention to minor's welfare].) The house had a strong odor of marijuana. The mother at first denied the presence of the drug paraphernalia and then later admitted that it was on the dresser. However, rather than take responsibility for her actions, the mother claimed she was taken advantage of by the officer and should not have let the officer in the house.

Moreover, the mother and the father exposed the children to incidents of domestic violence. The father conceded that the domestic violence occurred in the presence of the children. Despite the prior incidents of domestic violence and the criminal protective order against the father, the mother continued to see him and cohabitate with him. She only acknowledged the father's presence in the home after she was confronted by her children's statements that both parents lived with them. Thus, the mother failed to recognize the impact of exposing her children to domestic violence.

Based on the foregoing, we conclude substantial evidence supports the court's jurisdictional findings.



DISPOSITION

The judgment is affirmed.

McINTYRE, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.